

# **Beach Use Ordinance for Goose Rocks Beach Kennebunkport, Maine**

## **I. Preamble, Purpose:**

This Ordinance is adopted pursuant to and in connection with a Beach Use Agreement by and among the Town of Kennebunkport and certain owners of properties on or in the vicinity of Goose Rocks Beach dated as of the \_\_\_\_ day of \_\_\_\_\_, 2012 and recorded in the York County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, relating to the use of portions of the Beach by members of the general public and by certain owners of property in the vicinity of, but not on, the Beach (hereinafter, the “Back Lot Owners” as defined herein).

The purpose of this Ordinance is to provide for the safety, enjoyment, health and welfare of persons using Goose Rocks Beach pursuant to the Beach Use Agreement, including members of the general public, the Back Lot Owners and others, while preserving the Beach as a natural resource, by authorizing, among other things, regulations to protect wildlife, dune areas and the Beach environment, and regulations for recreational use of portions of the Beach that are subject to use pursuant to the Beach Use Agreement, as the Beach Use Agreement may be amended from time to time, while respecting the private property rights of beachfront property owners, and devising regulations governing maintenance, management, operation and protection of the Beach designed to preserve its continued use as an environmentally friendly, family oriented beach to be enjoyed by Kennebunkport residents and property owners, their guests and invitees, and members of the general public using the Beach.

## **II. Definitions:**

As used in this Ordinance the following terms have the following meanings:

1. “Back Lot” means a lot located in the vicinity of, but not on, Goose Rocks Beach, the owner or owner’s predecessor of which is or was a party to the Beach Use Agreement.
2. “Back Lot Owner” means anyone who owns property located in the vicinity of, but not on, the Beach, and who is or whose predecessor owner was a party to the Beach Use Agreement.
3. “Beachfront Owner” means anyone who owns property fronting on the beach commonly known as Goose Rocks Beach and who is either a party to the Beach Use Agreement as of its effective date or who subsequently becomes a party to such Agreement by supplemental agreement with the Town.

4. “Beach” means the beach commonly known as Goose Rocks Beach from the Batson River to the Little River and extending in width seaward from the seawall or vegetation/landscape to the low water mark of the Atlantic Ocean.
5. “Beach Premises” means those portions of the Beach extending seaward from the seawall or vegetation/landscape to the low water mark of the Atlantic Ocean and located adjacent to and immediately seaward of each of the Beachfront Owners’ upland properties situated at the addresses set forth in Schedule A of the Beach Use Agreement (the “Upland Properties” or “Upland Property”), as that Schedule may be subsequently amended by supplemental agreement with the Town.
6. “Large Volume Vehicle” is defined as a motor vehicle (such as a bus or trolley) designed for carrying more than 15 persons, including the operator.
7. “Public Access Points” describe those existing access points and rights of way where members of the public gain access to the Beach, and include the locations as shown and listed on the map attached as **Exhibit 1**.
8. “Reserved Area” means a twenty-five (25) foot strip of land measured in width extending from the seawall or vegetation/landscape line towards the Atlantic Ocean extending across the full length of a Beachfront Owner’s seaward property boundary, as measured at the seawall or vegetation/landscape line, except that for beachfront properties where, during tidal events when the Reserved Area extends below the high water mark into the intertidal zone, the Reserved Area will be reduced to ten (10) feet in width for one (1) hour before high tide until one (1) hour after high tide.

### **III. Beach Advisory Committee**

There shall be established a standing Beach Advisory Committee to provide guidance regarding the management of the Beach Premises in accordance with the provisions of this Ordinance; to consider, propose, and review regulations and Ordinance changes; to advise on related matters governing use of the Beach Premises by all persons; and to perform such other duties set forth in this Ordinance and in Schedule D of the Beach Use Agreement.

- A. Composition. The Beach Advisory Committee shall be comprised of eight (8) members. Four (4) members shall be Beachfront Owners, two (2) members shall be Back Lot Owners, one (1) shall be an at-large community member, and one (1) shall be appointed by the Board of Selectmen. A nonresident of the Town may serve as a Beachfront Owner representative member or a Back Lot Owner representative member.
- B. Appointment; Elections. Beachfront Owners and Back Lot Owners shall elect their respective members through annual elections to be facilitated by the Town. Each Beachfront Owner will have the number of votes equal to the number of beachfront lots owned by that Beachfront Owner in each election. A Beachfront Owner who becomes a party to the Beach Use Agreement after its effective date shall be immediately eligible to

vote for a Beachfront Owner representative but shall not be eligible to serve on the Beach Advisory Committee until five (5) years after the Beach Use Agreement goes into effect. Each Back Lot Owner shall have the number of votes equal to the number of Back Lots owned by that Back Lot Owner in each election, except that the Back Lot Owners may, by majority vote, permit other property owners in the Goose Rocks Beach area to vote for and/or to serve as a Back Lot Owner member of the Beach Advisory Committee. The at-large community member shall be elected at a Town Meeting. The Board of Selectmen shall appoint a member to coincide with the election of other members.

- C. Terms; Term Limits. The members of the Beach Advisory Committee shall serve for three-year terms, and the terms shall be staggered. Members are limited to serving two full, consecutive three-year terms. Reappointment or re-election may occur after a one year period of non-service.
- D. Organization. The members of the Beach Advisory Committee shall elect annually from its membership a Chairman, a Vice-Chairman, and a Secretary.
- E. Voting; Quorum. Five (5) members of the Beach Advisory Committee present or participating shall constitute a quorum. All actions and decisions by the Beach Advisory Committee shall be made by a majority vote of the full membership of the Board (not a majority of the quorum). A tie vote results in no action, decision or recommended changes.
- F. Duties. The Beach Advisory Committee shall advise the Board of Selectmen on all matters concerning Goose Rocks Beach, including:
  - 1. Recommending, drafting, and/or reviewing proposed revisions to this Beach Use Ordinance as necessary;
  - 2. Recommending, drafting, and/or reviewing proposed further regulations as contemplated in Section IV.D of this Ordinance;
  - 3. Advising and making recommendations to the Board of Selectmen as to expenditures from the Beach Maintenance Fund;
  - 4. Reviewing compensation matters in connection with arbitration proceedings provided for in the Beach Use Agreement;
  - 5. Assisting in informal resolution of complaints between the parties to the Beach Use Agreement upon request; and
  - 6. Assisting in the resolution of problems relating to use of the Beach, as appropriate, and offering recommendations to the Board of Selectmen for solutions, if warranted.

## **IV. Use of the Beach Premises**

### **A. Recreational Use Permitted**

The Beach Premises may be used by any person for active and passive recreational and recreational related purposes and activities customarily associated with, or conducted upon, beaches, including, without limitation, swimming, sunbathing, walking and typical “beachgoer” uses, subject to the limitations provided herein pertaining to use of the Reserved Areas, and provided that such purposes and activities shall be undertaken in compliance with the provisions of this Ordinance.

### **B. Reserved Area**

1. The portion of the Beach Premises called the Reserved Area, as defined herein, shall be reserved for the Beachfront Owner(s). A Beachfront Owner shall have preferred use of the Reserved Area adjacent to their Upland Property and may exclude members of the general public, Back Lot Owners and others from the Reserved Area, except for the walking rights provided herein.
2. Storage of watercraft and equipment for beach recreation/enjoyment, in a manner that does not impede the walking rights of others using the Beach, shall be permitted in the Reserved Area by Beachfront Owner(s). No member of the general public or Back Lot Owner may store or leave any watercraft or beach equipment in the Reserved Area except by permission of the Beachfront Owner.
3. Members of the general public and/or Back Lot Owners using the Reserved Area may be asked by the Beachfront Owner to move out of the Reserved Area, and shall be expected to do so promptly and shall leave the Reserved Area as they found it.
4. Notwithstanding Paragraph 3 above, walking by members of the general public, Back Lot Owners and others shall be permitted within the Reserved Area at any time.
5. On a year-round basis, the Town shall respond promptly to a request by a Beachfront Owner to enforce the Owner’s preferred or exclusive use of the Reserved Area if the Beachfront Owner’s request that any beach user leave the Reserved Area is unsuccessful.
6. In addition to the Town’s enforcement duties in Paragraph 5 above, the Town shall provide sufficient enforcement of Beachfront Owners’ preferred or exclusive use of the Reserved Areas by increased foot patrol on the Beach on a seasonal basis from June 15<sup>th</sup> through Labor Day, as necessary.
7. The Town shall make information readily available to public visitors to the Beach and Back Lot Owners and their invitees/designees regarding the rules of use pertaining to

the Reserved Areas, such as by appropriate signage at Public Access Points to the Beach and by dissemination of information to residents, visitors, rental agencies and commerce or tourism bureaus.

8. Nothing in these rules governing the Reserved Areas of the Beach Premises shall be interpreted to require or encourage Beachfront Owners to post signs or flags on their property, provide notice of any kind to the Town, to other Beach users or to the Beach Advisory Committee or any successor Committee, or perform any acts other than those described in these rules herein, in order to exercise their right to preferred or exclusive use, at their election, of the Reserved Area. This Paragraph 8 shall not be interpreted to alter the duties of the Town described in Paragraphs 1 through 7 above.
9. The rules described in Paragraphs 1 through 8 above implement the appropriate means referenced in Paragraph 4.a. of the Beach Use Agreement for a Beachfront Owner to exercise preferred or exclusive use of the Reserved Area.

### **C. General Restrictions on the Beach**

The following restrictions shall apply to the use of the Beach Premises by members of the general public, the Back Lot Owners, Beachfront Owners using any portion of the Beach Premises not adjacent to their own Upland Properties, and others:

1. No alcohol or tobacco use;
2. No glass containers;
3. No disorderly conduct, or public indecency;
4. No littering;
5. No commercial soliciting;
6. No removal of sand, gravel or rocks from the Beach Premises (this provision is not intended to regulate the removal of seashells, driftwood, seaweed or scientific samples);
7. No camping, sleeping or use of tents overnight on the Beach Premises;
8. All holes created by an individual party (or parties) using the Beach Premises must be filled in by that party prior to leaving the area;
9. No launching of motorized boats on the Beach Premises except where required for emergency response or rescue or for public safety;
10. No starting or allowing any fire to burn within the Beach Premises, unless a fire permit has been issued by the municipal fire chief or designee(s) and permission

has been obtained from the Beachfront Owner, in accordance with regulations that may be adopted by the municipal officers in consultation with the Beach Advisory Committee as provided in Subsection D.5 herein;

11. No climbing, sitting, or standing on the rocks or seawall adjacent to the Beach Premises;
12. Overnight storage of beach equipment such as chairs and toys is prohibited unless by permission of the Beachfront Owner and consistent with Section IV.B.2, except for storage of watercraft, kayaks and other such equipment consistent with the provisions of Section IV.D.3 and any regulations adopted thereunder;
13. No mass gathering permits may be issued for any portion of the Beach Premises without the written permission of the Beachfront Owner.

Beachfront Owners and their invitees shall not be subject to the above enumerated restrictions as to their use of the portion of the Beach Premises adjacent to their own Upland Properties, except for the restrictions in 3, 4, 5, 8 and 10 above, restrictions 1 and 2 outside the Reserved Area, and as may otherwise be limited or prohibited by law.

Willful interference with the public use rights set forth in this Ordinance by any person, including a Beachfront Owner or his/her invitee, shall be deemed a violation of this Ordinance.

#### **D. Additional Regulations**

The municipal officers may, upon consultation with the Beach Advisory Committee, adopt regulations implementing this Ordinance, including but not limited to the following areas:

1. Regulations governing domestic animals or pets on the Beach, which shall require at a minimum that domestic animals or pets shall at all times be under the control of their owner or keeper, and that the owner or keeper shall remove and properly dispose of all animal feces (this provision is not intended to apply to horses and horseback riding, which are regulated by the Town Horseback Riding on Goose Rocks Beach Ordinance);
2. Regulations to protect the environment, including, for example, signage to protect dune grass, marine life and wildlife on the Beach;
3. Regulations limiting storage of watercraft, dinghies, kayaks and other such equipment by non-Beachfront Owners to designated areas where the Town has the authority to store such equipment or other areas with permission of the Beachfront Owner (such as Dinghy Point), except that the municipal officers may

not designate any such area other than Dinghy Point without the written permission of the Beachfront Owner;

4. Regulations regarding use of the Beach Maintenance Fund, established and maintained by the Town under the terms set forth in the Beach Use Agreement, which use shall be exclusively for beach maintenance and improvement and enforcement of beach regulations in consultation with the Beach Advisory Committee;
5. Regulations governing fires and fire permits on the Beach Premises, consistent with Subsection C.10. above;
6. Regulations governing hours of use of the Beach Premises; and
7. Regulations, including appropriate signage governing protections for beachfront properties located adjacent to public rights of way and/or other areas receiving heavy beach user traffic.

## **V. Parking and Traffic Control**

### **A. Parking Regulations:**

The municipal officers shall, in consultation with the Beach Advisory Committee, adopt and maintain parking and traffic control regulations regarding access to the Beach Premises to include the following:

1. Penalties. Such regulations shall address enforcement issues, including a schedule of fines and/or penalties for parking and traffic infractions.
2. Number of Parking Spaces. Notwithstanding the Town of Kennebunkport Traffic and Parking Control Ordinance or any other parking or traffic control ordinances adopted by the municipal officers pursuant to 30-A M.R.S.A. § 3009 or other authority, the number of available parking spaces designated for access to the Beach Premises shall be limited to no more than one hundred and seventy-three (173) parking spaces unless the Beach Use Agreement has been amended pursuant to its terms to permit additional spaces.
3. Beach Permit Parking. The regulations shall specify a system of parking stickers, parking meters, and/or a suitable system of technology.
4. Location of Spaces. The location of parking spaces maintained by the Town for access to the Beach shall be specified on a map, attached as **Exhibit 2**, as such map may be updated from time to time. A decision to change the location of a parking space shall be made after consultation with the Beach Advisory Committee, except where such consultation is impracticable for public safety reasons.

B. Large-Volume Vehicles Restricted:

Due to traffic and safety concerns, Large-Volume Vehicles are prohibited from stopping and discharging or picking up passengers at the Public Access Points and private access points to the Beach. This prohibition is not intended to apply to school buses.

C. Information and Signage:

The Town shall make information readily available to public visitors to the Beach and Back Lot Owners and their invitees/designees regarding the restrictions of this Section, such as by appropriate signage at public access points and parking areas and by dissemination of information to residents, visitors and commerce or tourism bureaus.

## **VI. Enforcement and Penalty**

This Ordinance is enforced by the Kennebunkport Police Department. Any person who violates any provision of this Ordinance commits a civil violation for which a penalty of not more than one hundred dollars (\$100.00) may be adjudged. Enforcement of parking and traffic rules, including fines and/or penalties for parking and traffic infractions, shall be governed by regulations adopted pursuant to Section V herein. All penalties recovered shall accrue to the benefit of the Town.

## **VII. Other Provisions**

- A. Beach Closures. The Town Manager is authorized to close the Beach Premises to public use when water quality testing determines the water to be unhealthy for humans.
- B. Staffing. The Town shall provide acceptable levels of staffing to ensure reasonable enforcement of the Ordinance, which shall include increased foot patrol presence on the Beach on a seasonal basis from June 15th through Labor Day for enforcement of the Reserved Areas and other rules and regulations pertaining to the Beach Premises.
- C. No Abrogation of Public Trust Rights. Notwithstanding any provision of this Ordinance, nothing in this Ordinance shall have the effect of limiting or abrogating any public trust rights that exist or are declared in the intertidal zone under the common law of the State of Maine.
- D. Ordinance Amendment Procedure. Amendments to this Ordinance may be brought for consideration to the Board of Selectmen by the Beach Advisory Committee, may be initiated by the Board of Selectmen, or may be initiated by petition as provided by state law. Before being placed on a Town warrant, proposed changes to the Ordinance shall be reviewed by the Board of Selectmen and the Beach Advisory Committee for consistency with Paragraph 5 and Schedule C of the Beach Use Agreement, and no changes to the Ordinance that are deemed by the Selectmen to be inconsistent with the Beach Use



Agreement may be made without prior amendment of the Beach Use Agreement, except to the extent required by law.

- E. Severability. The invalidity of any section or provision of this Ordinance shall not affect the validity of any other section or provision of this Ordinance.
- F. Effective Date. This Ordinance shall take effect and be in force upon the effective date of the Beach Use Agreement as provided in Paragraph 12 thereof, provided, however, that the Town's enforcement duties under this Ordinance shall not be required to be fully in place until May 15, 2013. Once effective, this Ordinance shall cancel and/or supersede any conflicting existing ordinance as a whole or any part thereof relating to the same subject matter.
- G. Applicability. This Ordinance is intended to apply to the Beach Premises only and the Town shall have no right or obligation to enforce the provisions of this Ordinance on, and this Ordinance shall not apply to, any portion of the Beach that is not subject to the Beach Use Agreement, as that Agreement may be amended from time to time. Upon taking effect, this Ordinance shall remain in effect with respect to the Beach Premises unless or until the rights and obligations of the Town with respect to public use of all or any portion of the Beach Premises are terminated pursuant to the Beach Use Agreement terms. In such event, the Ordinance shall be of no further force and effect as to the portions of the Beach Premises as to which the Town's rights and obligations under the Beach Use Agreement have been terminated, but shall otherwise remain in full force and effect.
- H. Private Use Rights. No actions of the general public and no failure or act of the Town relating to the Beach Use Ordinance shall affect or impair the private rights and obligations as between the Beachfront Owners and the Back Lot Owners under the Beach Use Agreement or the private rights and obligations that may exist as between any beachfront owner and any Back Lot Owner.
- I. Assumption of Risk. Use of the Beach by the general public, the Back Lot Owners and others shall constitute an assumption of all risks associated with such beach use. The Town shall provide appropriate signage at Public Access Points to the Beach indicating that use of the Beach Premises is at the user's own risk.
- J. Indemnity. The Town agrees to indemnify and hold harmless the Beachfront Owner up to the limits imposed under the Maine Tort Claims Act, 14 M.R.S. §§8101, et seq., from and against any loss, damage, liability, cost or expense, including reasonable attorneys' fees, arising from any claim, suit or judgment brought by or on behalf a member of the public against a Beachfront Owner based upon or arising out of the use of the Beach Premises that is not the result of the Beachfront Owner's willful or malicious failure to guard or to warn against a dangerous condition, use, structure or activity on the Beachfront Owner's property. Nothing in this paragraph shall waive any defense, immunity or limitation of liability which may be available to the Beachfront Owner or the Town pursuant to the the Maine Recreational Use Statute, 14 M.R.S. §159-A, and /or the

Maine Tort Claims Act, 14 M.R.S. §§8101, et seq., or otherwise, the Town and the Beachfront Owners acknowledging and agreeing that use of the Beach Premises is being granted to the public without charge for the purpose of recreational activities by the general public. When any Beachfront Owner becomes aware of any claim, suit or judgment which may be covered by this paragraph, the Beachfront Owner shall immediately notify the Town and the Town may, in its discretion, undertake defense and compromise of the claim, suit or judgment on behalf of the Beachfront Owner.